

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JANE DOE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

DEVAL L. PATRICK, Governor of the
Commonwealth of Massachusetts;
**MASSACHUSETTS DEPARTMENT OF
CORRECTION; LUIS S. SPENCER**,
Commissioner of the Massachusetts
Department of Correction; and **LYNN
BISSONNETTE**, Superintendent of the
Massachusetts Correctional Institution at
Framingham,

Defendants.

Civil Action No. 1:14-cv-12813

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
LEAVE TO SUPPLEMENT THE COMPLAINT**

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Jane Doe, Jane Doe 2, and Jane Doe 3 (“Plaintiffs”), respectfully submit this Memorandum of Law in Support of their Motion for Leave to Supplement the Complaint.

INTRODUCTION

On June 30, 2014, Jane Doe filed the Complaint, alleging that her incarceration at the Massachusetts Correctional Institute at Framingham (“MCI-Framingham”) solely pursuant to a civil commitment for substance abuse treatment under Chapter 123, Section 35 of the Massachusetts General Laws (“Section 35”) violated federal and Massachusetts constitutional and statutory law. Subsequent to the filing of the Complaint, Jane Doe 2 and Jane Doe 3 were also incarcerated at MCI-Framingham solely pursuant to a civil commitment for substance abuse treatment under Section 35.

The incarceration of Jane Doe 2 and Jane Doe 3 violates federal and Massachusetts law in the same ways as did the incarceration of Jane Doe. Jane Doe 2 and Jane Doe 3 thus seek to assert identical claims for relief, based on nearly identical allegations, as those raised by Jane Doe in the original Complaint. Although Jane Doe 2 and Jane Doe 3 are already members of the putative class, they have each expressed a desire to serve as class representatives in this case. Because the events relating to Jane Doe 2 and Jane Doe 3 occurred after the filing of the original Complaint, supplementing the Complaint is the procedurally appropriate, and most efficient, way to add Jane Doe 2 and Jane Doe 3 as class representatives. Accordingly, and because this motion is brought in good faith and supplementing the Complaint would not unduly prejudice Defendants or delay the proceedings, Plaintiffs respectfully request that the Court grant their

Motion for Leave to Supplement the Complaint with the additional allegations and claims set forth in the Proposed Supplemental Complaint attached hereto as Exhibit A.¹

ARGUMENT

Rule 15(d) of the Federal Rules of Civil Procedure provides that, “on just terms,” a court may permit a party to serve a supplemental complaint “setting out any transaction, occurrence, or event that happened after the date of the” original complaint. Fed. R. Civ. P. 15(d). Motions to supplement a complaint should be freely granted “[a]bsent undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or futility.” *Graham v. Grondolsky*, No. 08-40208-MBB, 2012 WL 405459, at *16 (D. Mass. Feb. 7, 2012) (quoting *Quaratino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995)); *see also VideoShare, LLC v. YouTube, LLC*, No. 12-12012-MLW, 2014 WL 458155, at *3 (D. Mass. Feb. 1, 2014) (Wolf, J.) (supplemental pleadings “should generally be liberally allowed when justice so requires”). The Supreme Court has recognized that Rule 15(d) permits adding parties who “participat[ed] in the[] new events” covered by the supplemental complaint. *Griffin v. Cnty. Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 227 (1964). “[Rule 15(d)] is a tool of judicial economy and convenience” and “[i]ts use is therefore favored.” *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988).

The facts alleged in the Proposed Supplemental Complaint all concern the incarceration of Plaintiffs Jane Doe 2 and Jane Doe 3 pursuant solely to a civil commitment for substance abuse treatment under Section 35 that occurred subsequent to the filing of the original Complaint. Permitting Jane Doe 2 and Jane Doe 3 to be joined as plaintiffs in the instant action will not unduly prejudice Defendants or delay the proceedings.

¹ Should the Court grant Plaintiffs leave to supplement the complaint, Plaintiffs also intend to file an updated memorandum of law in support of the pending motion for class certification, which will reflect the addition of Jane Doe 2 and Jane Doe 3. A proposed updated memorandum is attached hereto as Exhibit B.

Jane Doe 2 and Jane Doe 3 were both incarcerated at MCI-Framingham within the last two weeks.² They both wish to be class representatives in this case. Upon learning of this fact in the last few days, Plaintiffs immediately filed the instant motion, seeking to supplement their complaint. Thus, Plaintiffs have not unduly delayed in bringing this motion. Nor will the requested supplementation cause any undue delay in the resolution of this case. No defendant has answered the original Complaint and no scheduling order has been entered.

Supplementing the Complaint will not unduly prejudice Defendants. The factual allegations of Jane Does 2 and 3 are virtually the same as those alleged by Jane Doe and the legal claims are identical. Thus, little additional effort will be required to respond to the allegations and claims set forth in the Proposed Supplemental Complaint.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant them leave to supplement the original Complaint.

² Plaintiffs will not provide specific dates to maintain the anonymity of Jane Doe 2 and Jane Doe 3.

Dated: July 17, 2014

Respectfully submitted,

/s/ William F. Lee

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Certificate of Service

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 17, 2014.

/s/ William F. Lee
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